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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,655	03/12/2001	Paul E. Bender	PA000422	2000

23696 7590 12/16/2003

Qualcomm Incorporated  
Patents Department  
5775 Morehouse Drive  
San Diego, CA 92121-1714

EXAMINER

GEORGE, KEITH M

ART UNIT	PAPER NUMBER
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2663

DATE MAILED: 12/16/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/804,655

**Applicant(s)**

BENDER, PAUL E.

**Examiner**

Keith M. George

**Art Unit**

2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14 and 15 is/are allowed.
- 6) ☒ Claim(s) 1, 7 and 18 is/are rejected.
- 7) ☒ Claim(s) 2-6, 8-13, 16 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 18 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by Kramer, U.S. Patent 6,195,345, hereinafter Kramer. Kramer teaches that if there is an outage on one of the back-end machines (determining a data service outage), then the corresponding VLX module would detect this condition, and take all virtual channels that go to this machine out of service (means for transmitting a data outage indicator to inhibit data transmissions during the outage) (column 9, lines 45-48).

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pankaj et al., U.S. Patent 6,229,795, hereinafter Pankaj, in view of Kokko et al., U.S. Patent 5,790,534, hereinafter Kokko.

5. Referring to claim 1, Pankaj teaches a channel scheduler for use in a wireless base station that is implemented in a computer system, which includes a processor, random access memory, and a program memory for storing instructions to be executed by the processor (wireless apparatus comprising a processor and memory) (column 6, lines 9-13). Pankaj possibly fails to teach that the channel scheduler determines if sufficient time slots are available to transmit a data packet or that it generates an outage indicator to inhibit transmission of the data packet if sufficient time slots are not available. Kokko teaches a channel reservation system where the amount of required resources is compared to the maximum available amount of resources (determine if sufficient time slots are available to transmit a data packet). If the required amount of resources does not exceed the maximum available amount of resources, permission is granted to transmit, if the amount of resources exceeds the maximum resources, a transmission prohibition is sent to the requesting station (generate an outage indicator to inhibit transmission of the data packet if sufficient time slots are not available) (column 6, lines 34-43). Both Pankaj and Kokko are teaching a scheduling method for use in a CDMA system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the channel reservation system of Kokko on the hardware architecture taught by Pankaj in order to provide a wireless mobile with a reverse link load control function.

6. Referring to claim 7, Pankaj and Kokko teach the system described in claim 1 above where it has been clearly shown that if the amount of resources exceeds the maximum resources,

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a transmission prohibition is sent to the requesting station. It would have been obvious to one of ordinary skill in the art at the time the invention was made that an outage in the system would result in no resources available for transmission, therefore, a transmission prohibition message would be sent to the requesting station.

***Allowable Subject Matter***

7. Claims 14 and 15 are allowed.
8. Claims 2-6, 8-13, 16 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments filed 22 September 2003 have been fully considered but they are not persuasive.
10. In response to applicant's arguments regarding claim 1, the recitation "mobile wireless apparatus" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

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11. In response to applicant's arguments regarding claim 7, it has been clearly shown above that Pankaj and Kokko teach that if the amount of resources exceeds the maximum resources, a transmission prohibition is sent to the requesting station (inhibit data transmission during the outage from a mobile wireless apparatus being operative in the wireless data communication system).

***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith M. George whose telephone number is 703-305-6531. The examiner can normally be reached on M-Th 7:00-4:30, every other F 7:00-3:30.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 703-308-5340. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4750.



Keith M. George  
9 December 2003



CHI PHAM  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600 12/10/03